

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL CONTRACTS  
PRIORITY MAIL--NON-PUBLISHED RATES

Docket No. CP2011-51

**RESPONSE OF THE UNITED STATES POSTAL SERVICE  
TO COMMISSION ORDER NO. 3714, WITH PORTIONS FILED UNDER SEAL**  
(January 6, 2017)

The United States Postal Service hereby provides its response to Commission Order No. 3714, which was issued on December 29, 2016.<sup>1</sup> In that Order, the Commission directed the Postal Service to provide an explanation demonstrating good cause for its Motion for Late Acceptance in this docket,<sup>2</sup> including the steps it will take to prevent future untimely filings for contracts signed under the Priority Mail—Non-Published Rates (PMNPR) category.<sup>3</sup>

Background

As the Commission pointed out in its Order, prior to December 22, 2014, the Postal Service had filed nine PMNPR contracts with the Commission. While the Non-Published Rates (NPR) approach (of which the PMNPR contracts are a subset) has

---

<sup>1</sup> Portions of the Postal Service's response have been filed under seal. Attached to this pleading is an application for non-public treatment for the protection of these materials.

<sup>2</sup> Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010-0247, filed December 28, 2016.

<sup>3</sup> The Postal Service is today filing a notice for PMNPR contracts with serial numbers ending in 0248-0252, along with a Motion for Late Acceptance pertaining to three of those five agreements. As discussed in that Motion, and more fully herein, the Postal Service expects the procedural improvements it has implemented will ensure future PMNPR agreements will be filed within the Commission's prescribed ten-day window.

proven to be a successful tool for the Postal Service, and saved significant resources for both the Postal Service and the Commission in dealing with large number of contracts, the use of this tool had primarily been confined to international, not domestic, agreements. As such, the procedures developed for and the expertise derived from dealing with large numbers of NPR agreements were primarily confined to the Postal Service's Global Business function. On the domestic side, which involved a separate set of analysts and attorneys, the Postal Service's approach had been the opposite, with the vast majority of domestic contracts falling outside the NPR approach, and instead being filed under the authority set forth in Governors' Decision 11-6.

In 2016, however, the personnel who handle domestic competitive contracts were confronted with an unusual situation which required a dramatic change in approach. Management determined in its January 2016 annual competitive price change<sup>4</sup> to increase Priority Mail Commercial Plus pricing (CPP) by 13.3 percent. This significant increase was part of a strategy to move toward the eventual elimination of the CPP price category in 2017, to better conform to the industry standard of publishing only one set of generally available commercial rate tables. This decision resulted in a large number of existing CPP customers facing a significant price increase, effective on January 17, 2016. In response to this sizeable price change, many of these CPP customers considered quitting shipping with the Postal Service entirely, and diverting their volumes to Postal Service competitors. In response, the Postal Service sought to

---

<sup>4</sup> See generally, Docket No. CP2016-9, and Governors' Decision 15-1.

retain as much of this business as was commercially prudent by offering to many of these CPP customers some form of negotiated service agreement (NSAs).

The result was a significant increase in the number of traditional domestic NSAs filed with the Commission pursuant to the authority set forth in Governors' Decision 11-6, beginning in December 2015 and continuing throughout 2016. It is worth noting that from December 2015 through the end of 2016, the Postal Service filed over 300 traditional NSAs and amendments, not including PMNPR agreements. The Postal Service recently filed 48 traditional NSAs in December 2016 alone.

The additional workload associated with this influx of NSAs was considerable for both the Postal Service and the Commission, as each traditional NSA required Commission review and approval prior to becoming effective. In order to help mitigate some of this workload, effort was made to convert numerous CPP customers to PMNPR agreements, which are filed with the Commission after implementation. Thus, in 2016 the Postal Service began for the first time to utilize in earnest the PMNPR approach for domestic volume. If the Postal Service had not utilized the PMNPR approach over the past year, it would have roughly doubled the number of traditional NSAs filed during calendar year 2016 (from approximately 250 to approximately 500 traditional NSAs), each with unique docket numbers and requiring individual Commission review and approval.

#### Delay in Filing Notice for PMNPR Contracts

The sudden expansion of both traditional NSAs and PMNPR agreements posed significant problems for the Postal Service's Law Department particularly from a

resource standpoint and we acknowledge that the response to this tide of new agreements was inadequate and not up to standards. Judgmental errors and lack of oversight resulted in an ill-advised strategy to defer completion of the required notices in favor of filing requests for approval of traditional NSAs. The rationale, admittedly flawed, was that the traditional NSA's required pre-implementation review and approval, and therefore had priority. The unfortunate result of all of this was significant, prolonged, and compounded delays in appropriately providing timely notice to the Commission of the PMNPR agreements being negotiated and executed. Higher management within the Law Department was unaware of the underlying issues and therefore potential mitigation strategies and resource reallocations were not implemented.

Further complicating matters was that the main personnel that would typically be tasked with establishing better PMNPR review procedures and processing these agreements for timely filing with the Commission were at the same time responsible for various tasks related to traditional NSA filings and activity in Docket No. ACR2015. As the year progressed, those same resources were also tasked with preparing the Postal Service's 2017 annual price change cases, and the recently-filed FY 2016 Annual Compliance Report (ACR) filing in Docket No. ACR2016, all of which were treated as a higher priority for the Postal Service than diverting resources toward clearing the PMNPR backlog. Although the Postal Service made gradual progress throughout the year on reviewing each individual agreement, and ensuring that every PMNPR contract signed in 2016 was properly identified, cataloged, and reflected in a consolidated

financial input file submitted with the Postal Service's Notice on December 28, the resulting delay was inexcusably long. Ultimately, the Postal Service endeavored to file all outstanding PMNPR agreements in one complete, consolidated filing in this docket, and to report on each agreement in the FY2016 ACR filing. The Postal Service hopes the data and materials it has now provided gives the Commission a complete picture of each agreement, so that the Commission may meet its duty to ensure that the Postal Service remains in compliance with regulatory requirements.

Despite its acknowledged shortcomings, the Postal Service is committed to timely compliance with all Commission Orders, and to insuring that the mistakes in judgment and procedure evident in this matter are not replicated. In that regard, while the facts that precipitated this situation are not likely to reoccur, we are nevertheless taking several important steps to ensure that these errors are not repeated. Throughout this process, the Postal Service has gained experience on how to process domestic NPR agreements going forward and has identified the ways in which its processes and personnel fell short. As discussed below, the Postal Service has established new procedures to ensure a thorough review and timely filings for future PMNPR contracts.

#### Procedures Established for Future PMNPR Filings

The Postal Service is in the process of tasking multiple Solutions Development Specialists (SDSs) within the Sales group and at least two paralegals with maintaining a tracking spreadsheet for PMNPR agreements, and reviewing each PMNPR agreement when it is received from field Sales personnel to ensure it fits within the pre-approved contract template established in this docket. These SDSs and paralegals will work in

conjunction with Sales personnel and each PMNPR customer, to determine the effective date for each contract, which is typically the date that the customer starts shipping with the Postal Service under the agreement. This effective date “starts the clock” on the ten-day Commission notification requirement. In the past, it was a challenge for the Postal Service personnel involved in filing required notices to verify the effective date for every agreement, as each customer has different business needs and unique timing for shipping under the customer’s new NPR agreement.

Once the effective date for a PMNPR agreement has been established, a unique serial number will be assigned to the agreement. Both the effective date and serial number for each agreement will be transmitted for all such agreements, on Tuesdays and Thursdays each week, to the Finance group for preparation of the financial inputs file, and to the Law Department to begin preparation of the notice filing. Reporting these data internally to a wider audience, twice per week, will help ensure each agreement is filed within ten days after the effective date. Each transmission during this process within these departments shall include the ten-day deadline (based on the “start the clock” effective date for each agreement), so that everyone involved is aware of when notice must be filed with the Commission.

Additionally, if a large number of PMNPR agreements are expected to take effect in a short window in the future (such as, to coincide with future Priority Mail published price change effective dates), the Sales group will provide ample advance notice to the Law Department and Finance, so that additional resources may potentially be diverted to handle the influx prior to those PMNPR agreements taking effect. In the event that

the Postal Service fails to provide the Commission with notice within ten days for any future PMNPRs, the Postal Service will ensure that the accompanying Motion for Late Acceptance details the specific process failure that led to the delay.

Finally, and perhaps most significantly, an essential component of this new process will include enhanced oversight by multiple levels of management, particularly within the Law Department, to ensure that issues related to our ability to timely meet the ten-day notice requirement are appropriately elevated and addressed so that this scenario is not repeated. As a regulated entity the Postal Service takes its obligations to the Commission very seriously. In that regard, all appropriate measures will be taken to ensure future compliance.

### Conclusion

As discussed herein, the significant increase in NSA filings over the past year, both traditional and under the PMNPR approach, has created some unprecedented challenges and has strained the resources for both the Postal Service and the Commission. Heavy workloads and administrative and judgment errors combined to create the present situation. However, with additional dedicated resources and the enhanced oversight summarized above, we are confident that future problems will be avoided. Looking forward, the Postal Service submits that the PMNPR category, and the NPR approach in general, remains: 1) a valuable contract tool for the Postal Service and its customers; and 2) an efficient vehicle for converting certain CPP customers to more commercially reasonable rates after last year's price change, without unduly

burdening the Commission with the pre-implementation review and approval of hundreds of new traditional NSAs.

The Postal Service was able to retain approximately [REDACTED] in revenue by converting customers to PMNPR agreements over the past year.<sup>5</sup> The cancellation of these PMNPR agreements would put this revenue at risk and could result in these existing Postal Service customers reverting to published CPP prices, or utilizing competitors, until such time as the Postal Service is able replace each agreement with a traditional NSA and file each one with the Commission. Moreover, despite the shortcomings of the Postal Service filing in this instance, and as reflected in the Annual Compliance Report filed by the Postal Service, each of the PMNPR agreements did in fact cover its costs, and helped the competitive products as a whole to contribute an adequate share to the institutional costs of the Postal Service.

Nevertheless, the Postal Service recognizes that the Commission has an important duty to ensure that the Postal Service's PMNPR agreements remain in compliance with the various regulatory requirements. With the new procedures established for 2017, the Postal Service is in a much better position to assist the Commission in meeting its duty, with timely PMNPR filings going forward, and will endeavor to insure that these errors do not happen again.

---

<sup>5</sup> Each PMNPR agreement is valued, on average, at [REDACTED] per agreement, with a relatively narrow range of revenue per agreement, as these are primarily designed for smaller shipping customers who formerly utilized CPP pricing. By comparison, traditional Priority Mail NSAs yielded a total revenue of approximately [REDACTED] in FY 2016, with an average revenue of [REDACTED] per agreement, and a wider range of large shipping customers.



Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:

Kevin A. Calamoneri,  
Deputy General Counsel

Richard T. Cooper  
Managing Counsel, Corporate and Postal  
Business Law

Daniel J. Foucheaux, Jr.  
Chief Counsel, Pricing and Product Support

Elizabeth A. Reed

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-3179, Fax -6187  
[elizabeth.a.reed@usps.gov](mailto:elizabeth.a.reed@usps.gov)  
January 6, 2017

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of portions of its response to Commission Order No. 3714, specifically, aggregate data pertaining to the Postal Service's revenue from different types of domestic competitive negotiated service agreements (NSA)s. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3).<sup>1</sup> Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

---

<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>2</sup> Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

- (2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

None.

- (3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

The non-public materials include revenue estimates for the Postal Service's domestic competitive NSAs over FY 2016. As such, these figures are based on the prices and terms of numerous contracts previously filed under seal with the Commission. These figures provide revenue estimates between different types of NSAs, and could reveal the size of the Postal Service's NSA business within the highly competitive expedited shipping market. The Postal Service maintains that these redacted figures should remain confidential.

---

<sup>2</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and its customers would suffer commercial harm. The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of its customers. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and its customers would lose business as a result. Competitors could be able to use these figures to determine the Postal Service's overall NSA market size, and how that breaks down between different types of NSA customers. Competitors could then use the information gleaned from these data to attempt to better position themselves within the highly competitive expedited shipping market. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Identified harm: Public disclosure of the estimated revenue for certain types of NSA customers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A business in competition with the Postal Service obtains a copy of the unredacted figures. The competitor is then able to analyze the Postal Service's NSA market, as it pertains to different types of potential NSA customers. This information would reveal the size of the Postal Service's NSA market, and could allow competitors to better position themselves within the highly competitive expedited shipping market.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.